

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARLENE HUNT and U.S. POSTAL SERVICE,
POST OFFICE, Plainfield, NJ

*Docket No. 99-1069; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or about August 8, 1996 as a result of the employment injury she sustained on May 30, 1995.

On May 30, 1995 appellant, a distribution clerk, sustained an injury while in the performance of her duties when she helped a custodian move furniture. The Office of Workers' Compensation Programs accepted her claim for thoracic and lumbosacral strain and paid compensation for temporary total disability.

In a November 13, 1995 report, Dr. Donald J. Shutello, a Board-certified orthopedic surgeon and second opinion physician, found no evidence of disability. Dr. Shutello noted that appellant was involved in a nonwork-related motor vehicle accident in 1992 and sustained injuries to her thoracic and lumbosacral spine. He found that the injury appellant sustained on May 30, 1995 aggravated her preexisting degenerative disc disease of the low back but that this aggravation was temporary. Currently there was no objective evidence to support her continuing complaints of pain and disability. Dr. Shutello released appellant to her previous employment without restrictions. Appellant returned to full-time regular duty on January 2, 1996.

On October 22, 1996 appellant filed a claim asserting that she sustained a recurrence of disability on or about August 8, 1996 as a result of her accepted employment injury. She explained that since her employment injury of May 30, 1995 she had been experiencing continuous back spasms, tingling and numbness in her right leg and swelling in her legs, ankles and feet. Appellant stated that prior to August 6, 1996 she was having her usual back spasms, soreness and ankle swelling. When she awoke on August 6, 1996, however, she barely made it out of bed because of the severe back spasms, tingling, numbness in her right leg and swollen ankles. Appellant received shots in her lower back, but by the end of the week her spasms were only more intense.

A magnetic resonance imaging (MRI) scan showed disc degeneration with annular bulge and a central herniated nucleus pulposus and spondylosis deformans at L5-S1. Appellant's attending physician, Dr. Allan D. Tiedrich, an orthopedist specializing in sports and rehabilitation medicine, reported that this was new in comparison to a computerized tomography (CT) scan performed about a year earlier, which showed only degenerative disc disease and bulging. Dr. Tiedrich reported that appellant was totally disabled for work.

In a decision dated January 10, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish that the claimed recurrence of disability was causally related to the injury of May 30, 1995.

Appellant requested reconsideration and submitted additional medical evidence to support her claim.

In a report dated January 2, 1997, Dr. Tiedrich stated as follows: "It is my professional opinion that there is a direct relationship between the injuries the patient received while at work on May 30, 1995 and the herniated nucleus pulposus at L5-S1 with resultant radiculopathy. This condition has caused the patient to remain out of work from August 6, 1996 until the present time."

In a report dated January 17, 1997, Dr. Tiedrich gave a brief history of appellant's treatment prior to August 6, 1996. After describing the results of the subsequent MRI scan and his findings on physical examination, he stated: "Therefore, it is my professional opinion that within a reasonable degree of medical certainty based on the history as provided by the patient, the initial and subsequent physical examination, clinical course and diagnostic studies that there is a direct causal relationship between the patient's current complaints and problems related to her lower back and the on the job accident of May 30, 1995."

In a decision dated March 21, 1997, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted was immaterial.

On March 29, 1997 appellant again requested reconsideration. She stated that, when she finally returned to work in July 1996, her new job changed in that she no longer had a movable chair. She stated her belief that this change from a movable to nonmovable chair aggravated her back condition.

In a decision dated May 12, 1997, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Tiedrich had provided insufficient rationale to attribute appellant's condition to the employment injury.

On September 18, 1997 appellant again requested reconsideration and submitted an August 20, 1997 report from Dr. Tiedrich, who stated as follows:

"As you are aware, I am the treating physician of [appellant] for injuries received in an on-the-job accident which occurred on May 30, 1995 where the patient states that she hurt her lower back while moving furniture. At CT scan of the lumbosacral spine performed on July 8, 1995 showed L5-S1 degenerated disc

with vacuum phenomenon, diffuse annular bulge, disc space narrowing and subchondral sclerosis. At L4-5 there was mild annular bulge. A subsequent MRI scan of the lumbosacral spine performed on August 29, 1996 showed, again, disc degeneration with annular bulge and central herniated nucleus pulposus with spondylosis deformans at L5-S1. These diagnostic tests, although similar in nature, often show different levels of detail, particularly with the involvement of soft tissue.

“Therefore, it is my professional opinion that, although a herniated disc was not seen on the CT scan done shortly after the injury and since the MRI scan which was subsequently performed on the lumbar spine did demonstrate a herniated nucleus pulposus at L5-S1, that, within a reasonable degree of medical certainty, the incident of May 30, 1995 did materially contribute to the diagnosis of L5-S1 herniated nucleus pulposus.”

In a radiological report dated September 25, 1997, Dr. Howard Kessler reported that an open MRI scan of the lumbosacral spine revealed disc degeneration and bulging L5-S1 with mild sac impression and secondary degenerative endplate changes.

In a decision dated March 5, 1998, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

On May 19, 1998 appellant again requested reconsideration. In support thereof, she submitted a May 4, 1998 report from Dr. Tiedrich, who provided more detail about appellant’s clinical course and the results of diagnostic studies. He noted that injuries from a November 1992 automobile accident had not resolved when appellant sustained her employment injury on May 30, 1995.

In a decision dated November 20, 1998, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that Dr. Tiedrich did not specifically reference the claimed recurrence of disability on August 8, 1996 and did not provide sufficient rationale to support that her condition worsened by that date to the point that she could no longer perform her date-of-injury job.

The Board finds that the medical opinion evidence is insufficient to establish that appellant sustained a recurrence of disability on or about August 8, 1996 as a result of the employment injury she sustained on May 30, 1995.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

Appellant submitted medical opinion evidence supporting her claim of recurrence. Dr. Tiedrich, her attending orthopedist, reported on January 2, 1997 that it was his professional opinion that there was a direct relationship between the injuries appellant received at work on May 30, 1995 and the herniated nucleus pulposus at L5-S1 with resultant radiculopathy that caused her to remain out of work from August 6, 1996. This opinion is of diminished probative value, however, because Dr. Tiedrich did not support his conclusion with sound medical reasoning.² In his January 17, 1997 report, Dr. Tiedrich indicated that he based his opinion on the history as provided by appellant, her initial and subsequent physical examinations, her clinical course and diagnostic studies, but he offered no actual analysis of this evidence. He did not explain what he saw in the history, examinations, clinical course or diagnostic studies that led him to stated conclusion. It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.³ Because Dr. Tiedrich failed to explain how appellant's disabling herniated nucleus pulposus at L5-S1 was causally related to the employment incident that occurred on May 30, 1995, his opinion is insufficient to establish appellant's claim of recurrence.

In his August 20, 1997 report, Dr. Tiedrich explained that CT scans and MRI scans often show different levels of detail, particularly with the involvement of soft tissue. Although this supports the possibility that appellant had a herniated nucleus pulposus at the time of her July 8, 1995 CT scan, it does not show the possibility to be probable, or more probable than a subsequently acquired condition, nor does it rule out that the condition preexisted appellant's employment injury.

Finally, Dr. Tiedrich did not address the radiological report of September 25, 1997. An MRI scan of appellant's lumbosacral spine was reported to show disc degeneration and bulging L5-S1 with mild sac impression and secondary degenerative endplate changes. Notably, the report made no mention of a herniated nucleus pulposus. The report seems to be at odds with Dr. Tiedrich's opinion that the employment incident of May 30, 1995 materially contributed to a herniated nucleus pulposus at L5-S1.

As the medical opinion evidence is insufficient to establish that appellant's recurrence of disability on or about August 8, 1996 was causally related to her employment injury of May 30, 1995, appellant has not met her burden of proof.

The November 20, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 26, 2000

² Medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

³ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member